

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

**WP(C).No. 7335 of 2006(W)**

PETITIONERS:

1. JANAMMA, PUTHEN THARAYIL,  
NANGYARKULANGARA, CHINGOLI.
2. LAKSHMIKUTTY OMANA, SREENILAYAM, CHEPPAD P.O.
3. JACOB ALEXANDER, ULLURUPPIL,  
CHINGOLI VILLAGE, NANGYARKULANGARA.
4. GOMATHI, KUNNEL VEEDU, CHINGOLI, KARTHIKAPPALLY.
5. CHINNAMMA, KUNJANTHUNDIL,  
NANGYARKULANGARA, CHINGOLI.
6. KUNJAMMA, KANJOOR KOIKKAL,  
KOTTAKKAKAM, CHEPPAD P.O.
7. INDIRA, PALLITHEKKETHIL,  
KANJOOR, KOTTAKKAKAM, CHINGOLI.

BY ADVS. M/S.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)  
SREELEKHA PUTHALATH AND A.R.DILEEP

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY  
THE SECRETARY TO THE GOVERNMENT IN THE  
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.
2. DISTRICT COLLECTOR, ALAPPUZHA.
3. SPECIAL TAHSILDAR, LAND ACQUISITION (GENERAL),  
ALAPPUZHA.

GOVERNMENT PLEADER SRI.L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## **APPENDIX**

### **PETITIONERS' EXHIBITS:**

- |         |                                                                                                                       |
|---------|-----------------------------------------------------------------------------------------------------------------------|
| EXT.P1  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE FIRST WRIT PETITIONER.                  |
| EXT.P2  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE SECOND WRIT PETITIONER.                 |
| EXT.P3  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE THIRD WRIT PETITIONER.                  |
| EXT.P4  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE FOURTH WRIT PETITIONER.                 |
| EXT.P5  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE FIFTH WRIT PETITIONER.                  |
| EXT.P6  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE SIXTH WRIT PETITIONER.                  |
| EXT.P7  | TRUE COPY OF THE LETTER DATED 15.3.2005 ISSUED BY THE THIRD RESPONDENT TO THE SEVENTH WRIT PETITIONER.                |
| EXT.P8  | TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE COUNSEL FOR THE FIRST WRIT PETITIONER TO THE THIRD RESPONDENT.  |
| EXT.P9  | TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE COUNSEL FOR THE SECOND WRIT PETITIONER TO THE THIRD RESPONDENT. |
| EXT.P10 | TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE COUNSEL FOR THE THIRD WRIT PETITIONER TO THE THIRD RESPONDENT.  |
| EXT.P11 | TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE COUNSEL FOR THE FOURTH WRIT PETITIONER TO THE THIRD RESPONDENT. |
| EXT.P12 | TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE COUNSEL FOR THE FIFTH WRIT PETITIONER TO THE THIRD RESPONDENT.  |

EXT.P13 TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE  
COUNSEL FOR THE SIXTH WRIT PETITIONER TO THE THIRD  
RESPONDENT.

EXT.P14 TRUE COPY OF THE LETTER DATED 24.9.2005 ISSUED BY THE  
COUNSEL FOR THE SEVENTH WRIT PETITIONER TO THE THIRD  
RESPONDENT.

**RESPONDENTS' EXHIBITS:** NIL

//TRUE COPY//

AHZ/

**K.T. SANKARAN, J.**

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**W.P. (C) .NO. 7335 OF 2006**  
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**Dated this the 20<sup>th</sup> day of December, 2006**

**JUDGMENT**

When the Writ Petition came up for admission on 13.3.2006, the Government Pleader appeared for the respondents and sought time to get instructions. The case was thereafter posted on several occasions. Till today, the Government Pleader has not received any instructions in the matter. Therefore, the Writ Petition is being disposed of on the merits.

2. Lands belonging to the petitioners were acquired for the purpose of National Thermal Power Corporation. Award No.465/92 was passed. Applications were submitted by the petitioners under Section 18 of the Land Acquisition Act for reference. The petitioners did not receive any communication from the reference court or from the

office of the second respondent, District Collector. The petitioners filed representations before the third respondent, The Special Tahsildar, Land Acquisition (General). Third respondent issued Exts.P1 to P7 letters to the petitioners individually stating that the reference was made to the Sub Court, Mavelikkara. It is stated that on enquiry, the Writ Petitioners came to know that no such references have been received by the Sub Court, Mavelikkara, as mentioned in Exts.P1 to P7 letters. Thereupon, the petitioners individually caused to issue Exts.P8 to P14 lawyer notices to the third respondent pointing out that the enquiries made in the Sub Court, Mavelikkara revealed that the award was not sent on the date mentioned in the letter issued by the third respondent. The third respondent was requested to take necessary steps immediately. No reply was issued by the third respondent to Exts.P8 to P14 lawyer notices. The prayer in the Writ Petition is to issue a writ of mandamus or any other

appropriate writ, direction or order to refer the cases to the Sub Court, Mavelikkara.

3. When an application for reference is made, it shall be dealt with promptly. Rule 16A(2) of the Land Acquisition (Kerala) Rules, 1990 states that as soon as the reference application is received, the Land Acquisition Officer shall make necessary entries in the Register in Form Nos.21 and 23. Rule 377 of the Civil Rules of Practice provides that when a reference is made by the Collector, the reference shall be accompanied by the records which form the basis of the reference. Rule 378(3) of the Civil Rules of Practice states that the application before the Collector for reference shall be treated as a plaint and investigation shall be with reference to the claim made therein. Proviso to Rule 16 of the Land Acquisition (Kerala) Rules states that in the case of application presented to the Land Acquisition Officer for reference to Court, it shall be

:: 4 ::

referred within a period of six months from the date of receipt of the application.

4. Rule 18 of the Land Acquisition (Kerala) Rules provides that the Registers mentioned therein shall be maintained in all the offices dealing with land acquisition work. A register of reference applications filed by awardees shall be maintained in Form No.23. Form 21 appended to the Kerala Rules is the form of register of land acquisition suits. The details regarding suits and reference cases are to be shown in the register of land acquisition suits. Column (8) provides the number and date of Collector's reference; column (9) provides the name of the Court and number of the Suit/OP/LAR. Name of Government Pleader engaged for defending the case on behalf of the Government, date on which written statement or counter affidavit was filed, date on which evidence was adduced in Court, date of hearing and date of decision of the Court and the gist of the decision

are to be shown in columns (9) to (14). When an entry is made in the Register in Form No.23, the office of the third respondent is also bound to make necessary entries in the register in Form No.21. When an application for reference is made, it is the duty of the office of the Land Acquisition Officer to see that the reference application reaches the Court and to enquire about the further development of the case. The Land Acquisition Officer cannot simply say that the reference has been made to the Court and that there is no further information. The claimant is not expected to do anything as per the Land Acquisition Act or Land Acquisition (Kerala) Rules after he files an application for reference under Section 18 of the Land Acquisition Act. He need appear only before the Land Acquisition Court when he receives notice issued under Section 20 of the Land Acquisition Act. It is the duty of the Land Acquisition Officer to see that the reference application is promptly dealt with and the

:: 6 ::

reference is duly made to the Court. The Land Acquisition Officer is bound to satisfy that the reference was duly made and it was received by the Court. Here there is nothing to show that the reference was sent to the Court and it was received by the Court. Except the statement in the letters marked as Exts.P1 to P7, there is no material to indicate that the reference papers were sent to the Court. In Jameson v. State of Kerala (2006 (3) KLT 186), it was held thus:

".. When the matter comes up before the Land Acquisition Court, the Collector and the claimant would be parties contesting against each other and the failure of such an opponent or opposite party of the claimant to submit the records to the Reference Court should not be at the cost of the claimant..."

In Ram Kumar and others v. Union of India and others ((1991) 2 SCC 247), the Supreme Court held thus:

"Under S.18 of the Act the only requirement for the person interested who had not accepted the award was to move a

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written application to the Collector requiring that the matter be referred for the determination of the court. One of the grounds for not accepting the award was the amount of compensation. Once such application was moved it was the duty of the Collector to make a reference to the court. Under S.19 of the Act while making the reference the Collector was required to state for the information of the court the particulars as mentioned in clauses (a) to (d) of sub-section (1) of S.19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khasra No. or area as entered in the revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference under S.18 of the Act it becomes the duty of the Collector to send full information to the court regarding the entire land acquired and it is thereafter the duty of the court to decide the matter in accordance with law."

5. In this case, the award was passed in 1992. Exts.P1 to P7 letters issued by the Special Tahsildar would indicate that reference was made on different dates, namely, 6.12.1994, 18.2.1995,

19.6.1993, 10.3.1993, 14.9.1994, 13.1.1995 and 18.2.1995. Even in 2006, the petitioners have not received any notice from the reference court. In spite of Exts.P8 to P14 lawyer notices issued on 24.9.2005, the Special Tahsildar, Land Acquisition (General), did not say as to what happened to the reference. Valuable rights of the claimants are being defeated by the lethargy shown by the persons concerned in the office of the Special Tahsildar, Land Acquisition. If the petitioners were entitled to get enhanced compensation, they would have got it years before, if reference cases were promptly received by the reference court. The petitioners are seriously prejudiced since the reference cases did not reach before the court within a reasonable time after the date of the award.

6. In the facts and circumstances mentioned above, the Writ Petition is liable to be allowed. Accordingly, there will be a direction to the third respondent to send the records in respect of the

reference applications mentioned in Exts.P1 to P7 to the Sub Court, Mavelikkara expeditiously and at any rate, within a period of two months from the date of receipt of a copy of this judgment. The third respondent shall see that the relevant records are made available before the court and that necessary entries are made in the appropriate registers. The petitioners shall be duly intimated after the reference papers are produced before the Sub Court, Mavelikkara. If necessary, the third respondent may re-construct the records and send the same to the Court, along with a copy of this judgment.

The Writ Petition is disposed of as above.

**(K. T. SANKARAN)**  
**Judge**

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**K.T.SANKARAN, J.**

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**W.P. (C) NO.7335 OF 2006**

**JUDGMENT**

20<sup>th</sup> December, 2006

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